

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 75-1213

To be argued by  
PHYLIS SKLOOT BAMBERGER

B  
P/S

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

MICHAEL GLAZER,

Appellant.

Docket No. 75-1213

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APPENDIX TO APPELLANT'S BRIEF

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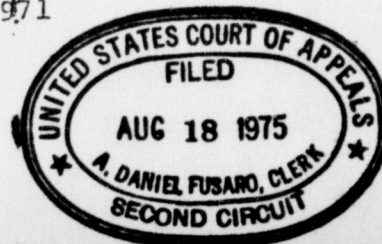
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ON APPEAL FROM A JUDGMENT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

WILLIAM J. GALLAGHER, ESQ.,  
THE LEGAL AID SOCIETY,  
Attorney for Appellant  
MICHAEL GLAZER

FEDERAL DEFENDER SERVICES UNIT  
509 United States Court House  
Foley Square  
New York, New York 10007  
(212) 732-2971

PHYLIS SKLOOT BAMBERGER,  
Of Counsel.



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CRIMINAL DOCKET  
UNITED STATES DISTRICT COURT

JUDGE HANS WATSON

75 APR 15 1975

D. C. Form No. 100 Rev.

TITLE OF CASE

THE UNITED STATES

vs.

ATTORNEYS

For U. S.:

Howard Wilson, AUSA.  
791-1923

For Defendant:

*7/28*

1. MICHAEL GLAZER-1,6&7
2. JACK KAPS, a/k/a Jack Kay- 1-3
3. HARVEY MARKS- 1,6&7
4. SANFORD SCHER-1,4,5,8&9
5. NICHOLAS SINOGAGLIA-1-3
6. SAMUEL M. WAGNER, a/k/a Mickey Wagner- 1-3

(05) STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk				
J.S. 3 mailed	Marshal				
Violation	Docket fee				
Title					
Sec.					
18:1001 False statements (Cts.2-7)					
18:1623 Perjury.(Cts.8&9)					
18:371 Consp. so to do.(Ct.1)					
( Nine=Counts)					

DATE	PROCEEDINGS
2-13-75	Filed indictment.
2-24-75	Deft. Michael Glazer present (Atty. present) enters a plea of not guilty. 10 days for motions. Deft. released on his own recognizance. Deft. to surrender passport. Deft. Jack Kaps present (Atty. present) enters a plea of not guilty. Deft. released on his own recognizance and to surrender passport. Deft. Harvey Marks present (Atty. present) enters a plea of not guilty. Deft. released on his own recognizance. Deft. Samuel Wagner present (Atty. present) enters a plea of not guilty. Deft. released on his own recognizance and to surrender passport. Deft. Nicholas Sinogaglia present (Atty. present) enters a plea of not guilty. Deft. released on his own recognizance. Deft. Sanford Scher present (Atty. present) enters a plea of not guilty. Deft. released on his own recognizance and to surrender passport. Lasher, J. Case assigned to Macintosh, J. for all purposes.

(Cont'd on Page #2)

C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Of Judgment
4-28-75	NICHOLAS SINIGAGLIA= Filed Deft's acknowledgement of his constitutional rights.	
4-28-75	SANFORD SCHER= Filed Deft's acknowledgement of his constitutional rights.	
4-28-75	SAMUEL M. WAGNER= Filed Defts acknowledgement of his constitutional rights.	
4-29-75	ALL DEFT'S= Filed Pltff's Request to Charge.	
4-28-75	JACK KAPS= Filed Deft's Personal Recognizance Bond without security in the sum of \$7,500. pending Sentence, signed by the Clerk.	
5-6-75	ALL DEFT'S= Filed notice - I, Bart M. Schwartz certify that on April 24, 1975 I received from William Barratt, Minuta Clerk to Honorable Lloyd F. MacMahon, the following exhibit : Government's Exhibit 13 (\$6,000 Cash). All other Government's Exhibits are also being retained by the government. Signed Bart M. Schwartz, AUSA.	
5-28-75	JACK KAPS= Filed Deft's Notice of Appeal to the U.S.CA, 2nd Circuit, from the judgment entered herein on 5-28-75. (m/c to US Atty & Deft-5-29-75)	
5-28-75	MICHAEL GLAZER= Filed Deft's Notice of Appeal to the U.S.C.A., 2nd Circuit from the judgment of Conviction & Sentence 5-28-75. (M/C to UA Atty & Deft -5-29-75).	
5-28-75	MICHAEL GLAZER= Filed Judgment And Commitment Order= The Deft is hereby committed to the custody of the Atty General for imprisonment for a period of THREE (3) MOS. and FINED \$10,000. on COUNT #7. Deft. to stand committed until the fine of \$10,000. is paid. Government's motion to dismiss COUNT #6 GRANTED. Bail cont'd pending appeal. ---MacMAHON, J.	
5-28-75	SANFORD SCHER= Filed Judgment And Commitment Order= The Deft. is FINED \$5,000. on COUNT #9 and is to stand committed until the total fine is paid. Payment of the total fine is stayed one week. COUNTS 1, 4, 5, and 8 are DISMISSED on motion of defense counsel, with the consent of the Government. ---MacMAHON, J.	
5-28-75	NICHOLAS SINIGAGLIA= Filed Judgment And Commitment Order= Imposition of sentence on Count 1 is suspended. Deft. is placed on probation for a period of SIX (6) Mos. subject to the standing probation order of this Court. COUNTS #2 and #3 are dismissed on motion of Deft's counsel with the consent of the Government ---MacMAHON, J.	
5-28-75	SAMUEL M. WAGNER= Filed Judgment And Commitment Order= The Deft. is hereby committed to the custody of the Atty General for imprisonment for a period of FIFTEEN (15) DAYS and FINED \$7,500. on COUNT #1. Deft. to surrender on June 11, 1975 at 10:30 AM. in Courtroom 506. COUNTS 2 and 3 are DISMISSED on motion of the Deft's counsel with the consent of the Government. ---MacMAHON, J.	
5-6-75	Filed transcript of record of proceedings dated May 24, 1975.	
5-9-75	SAMUEL WAGNER= Filed deft's Notice of motion for an order for reduction of sentence (no ret. date given)	
	A TRUE COPY RAYMOND F. MACMAHON, Clerk	
	By _____ Deputy Clerk	



"DATE"	PROCEEDINGS
2-27-75	MICHAEL GLAZER= Filed Notice of Appearance of Atty Richard Ives Rudell, 1501 Bway, NYC 10036, Tel# 736-6642.
2-27-75	JACK KAPS, a/k/a Jack Kay = Filed Notice of Appearance of Atty David A. Rosen, 1370 Ave of the Americas, NYC 10019, Tel# 489-0220.
2-27-75	HARVEY MARKS= Filed Notice of Appearance of Atty Robert J. McGuire, 630 5th Ave, NYC 10020; Tel# 765-6990
2-27-75	SANFORD SCHER= Filed Notice of Appearance of Atty John M. Chivil, 99 Park, NYC Tel # 682-6200.
2-27-75	NICHALOS SINIGAGLIA= Filed Notice of Appearance of Atty Andrew A. Costantino, 26 Court Street, Bklyn, NY Tel # 875-5615.
2-27-75	SAMUEL M. WAGNER, a/k/a Mickey Wagner = Filed Notice of Appearance of Atty Kalman V. Gallop, 1345 Ave of Americas, N.Y.C. 10019 Tel# 246-2880.
3-13-75	SANFORD SCHER= Filed Deft's Notice of Motion & Affirmation to sever Counts 8 & 9 from indictment in accordance with the Fed. Rules 8(a) and 14.
3-25-75	SANFORD SCHER= Filed Pltff's affdvt in opposition to Deft's motion for a severance of Counts 8 and 9 of the indictment.
3-25-75	SANFORD SCHER= Filed Pltff's Memorandum of Law in opposition to Deft's motion to sever counts charging Deft with perjury.
3-25-75	SANFORD SCHER= Filed MEMO ENDORSEMENT on Deft's motion dated 3-13-75 to sever Counts 8 & 9 from the indictment. Accordingly, the within motion is in all respects DENIED. SO ORDERED--MacMAHON, J. (n/m 3-26-75)
4-21-75	SANFORD SCHER= Deft (Atty Fittell present) pleads GUILTY to COUNT 9. P.S.R.O. Date of sentence 5-28-75 @ 10:00 AM. Bail cont'd. ---MacMAHON, J.
4-21-75	NICHOLASSCHER & SAMUEL M. WAGNER= Deft's (both Atty's present) plead GUILTY to COUNT 1 P.S.R.O. Date of Sentence 5-28-75 @ 10:00 AM. Bail cont'd. ---MacMAHON, J.
4-21-75	MICHAEL GLAZER & JACK KAPS= Deft's proceed to Trial. Trial Begun. HARVEY MARKS = Deft's oral motion to dismiss the indictment. Motion Granted MacMAHON, J.
4-22-75	Trial continued.
4-23-75	Trial continued.
4-24-75	Trial continued and concluded. Jury does not reach a verdict. Jury sequestered.
4-25-75	Jury returns to continue deliberation at 10:00 AM. Jury returns a partial verdict at 5:00 PM. Jury finds Deft GLAZER NOT GUILTY on COUNT 1. No decision on COUNT 6 as to C. Court declares mistrial as to COUNT 6. Jury finds Deft GLAZER GUILTY ON COUNT 7. HARVEY KAPS= Jury finds Deft GUILTY on COUNTS 1, 2, 3. Bail fixed by Court at \$2,500. P.R.B. for Deft GLAZER. P.S.R.O. Date of sentence 5-28-75 @ 10:00 AM. Bail fixed by Court at \$7,500. P.R.B. for Deft KAPS. Date of sentence 5-28-75 at 10:00 AM. ---MacMAHON, J.
4-28-75	MICHAEL GLAZER= Filed Deft's P.R.B. without security in the sum of \$2,500. pending appeal.

(Cont'd on Page #3)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

MICHAEL GLAZER,  
- JACK KAPS, a/k/a Jack Kay,  
HARVEY MARKS,  
- SANFORD SCHER,  
- NICHOLAS SINIGAGLIA, and  
- SAMUEL M. WAGNER, a/k/a Mickey  
Wagner,

Defendants.

INDICTMENT

75 Cr.



75 CRIM. 151

INTRODUCTION

1. The defendant MICHAEL GLAZER, at all times relevant to this indictment, was the President of Stuyvesant Moving Vans, Inc., 408 West 15th Street, New York, New York.
2. The defendant JACK KAPS, a/k/a Jack Kay, at all times relevant to this indictment, was affiliated with Kay's Moving Vans, 465 West 15th Street, New York, New York.
3. The defendant HARVEY MARKS, at all times relevant to this indictment, was employed by Stuyvesant Moving Vans, Inc., 408 West 15th Street, New York, New York.
4. The defendant NICHOLAS SINIGAGLIA, at all times relevant to this indictment, was the President of Experienced Machinery Movers, Inc., 120 Newton Street, Brooklyn, New York.
5. The defendant SANFORD SCHER, at all times relevant to this indictment, was the manager of Sanford Moving and Storage, 1999 Jerome Avenue, Bronx, New York.
6. The defendant SAMUEL M. WAGNER, a/k/a Mickey Wagner, at all times relevant to this indictment, owned a business known as Wagner Moving and Storage, 311 East 11th Street, New York, New York.
7. Richard Laupot, at all times relevant to this indictment, was an owner of Universal Metal Chain Corporation, 73 Clymer Street, Brooklyn, New York.
8. Dennis Green, at all times relevant to this indictment, was the Secretary-Treasurer of Businessman's Relocation Service of New York, Inc., 53 Park Place, New York, New York and was performing services for Universal Metal Chain Corporation in connection with a move of its facilities from Brooklyn, New York to Clifton, New Jersey.

MICROFILM

FEB 13 1975



9. The Universal Metal Chain Corporation, at all times relevant to this indictment, was a manufacturing company located on a site in the Williamsburgh section of Brooklyn which was being cleared of all buildings as part of the Urban Renewal Program funded by the United States Department of Housing and Urban Development. The New York City Department of Relocation and Management Services was directly in charge of selecting the company, in a competitive sealed bid procedure, that would perform the required services in moving the Universal Metal Chain Corporation to Clifton, New Jersey. The United States and the City of New York were responsible for paying for the costs of the move.

COUNT ONE

The Grand Jury charges:

1. From on or about November 6, 1973, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, MICHAEL GLAZER, JACK KAPS, a/k/a Jack Kay, HARVEY MARKS, SANFORD SCHER, NICHOLAS SINIGAGLIA and SAMUEL M. WAGNER, a/k/a Mickey Wagner, the defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with others to the Grand Jury unknown, to defraud the United States and to commit certain offenses against the United States, to wit, violations of Title 18, United States Code, Section 1001.

OBJECTS OF THE CONSPIRACY

2. It was a part of said conspiracy that the defendants would defraud the United States by circumventing and sabotaging the competitive sealed bid procedure being used by the New York City Department of Relocation and Management Services to select a company to move the facilities and equipment of the Universal Metal Chain Corporation from Brooklyn, New York to Clifton, New Jersey at the lowest cost to the United States.

3. It was further a part of said conspiracy that the defendants, in a matter within the jurisdiction of a department of the United States, to wit, the Department of Housing and Urban Development, unlawfully, wilfully and knowingly would make false, fictitious and fraudulent statements and representations in bids for the move of the

Universal Metal Chain Corporation certifying that there had been no agreement to fix the bid price or any part of the bid price or to submit a sham or collusive bid, whereas, as the defendants then and there well knew, they would and did enter into such an agreement.

4. It was further a part of said conspiracy that the defendants, in a matter within the jurisdiction of a department of the United States, to wit, the Department of Housing and Urban Development, unlawfully, wilfully and knowingly would make false, fictitious and fraudulent statements in a "Contractor's Assignment" to the effect that neither an owner of the Universal Metal Chain Corporation or its agent had received any sums of money whereas, as the defendants then and there well knew, they would agree to and did pay such a sum of money.

#### MEANS OF THE CONSPIRACY

Among the means by which the defendants would carry out the said conspiracy were the following:

5. The defendants JACK KAPS, a/k/a Jack Kay, NICHOLAS SINIGAGLIA and SAMUEL M. WAGNER, a/k/a Mickey Wagner, would pay \$6000 in cash to an owner of the Universal Metal Chain Corporation in return for a promise that the said defendants would provide the moving services to the company and that the said defendants could select the two other companies that would submit higher bids to the Department of Relocation and Management Services.

6. The defendants JACK KAPS, a/k/a Jack Kay, SAMUEL M. WAGNER, a/k/a Mickey Wagner, NICHOLAS SINIGAGLIA, MICHAEL GLAZER, HARVEY MARKS and SANFORD SCHER would submit rigged and collusive bids in which SAMUEL M. WAGNER, a/k/a Mickey Wagner, and NICHOLAS SINIGAGLIA were to be the low bidders.

7. The defendants JACK KAPS, a/k/a Jack Kay, SAMUEL M. WAGNER, a/k/a Mickey Wagner, NICHOLAS SINIGAGLIA, MICHAEL GLAZER, HARVEY MARKS and SANFORD SCHER would submit false statements to the Department of Relocation and Management Services which would conceal the \$6000 pay-off and the rigging of the bids.

#### OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in



the Southern District of New York:

1. On or about November 6, 1973, JACK KAPS, a/k/a Jack Kay, and SAMUEL M. WAGNER, a/k/a Mickey Wagner, met with Dennis Green and discussed making a pay-off to Richard Laupot and rigging the bids which were to be submitted to the New York City Department of Relocation and Management Services.

2. On or about November 7, 1973, JACK KAPS, a/k/a Jack Kay, and SAMUEL M. WAGNER, a/k/a Mickey Wagner, met with Dennis Green and discussed making a \$6000 cash pay-off to Richard Laupot and rigging the bids which would be submitted to the New York City Department of Relocation and Management Services.

3. On or about November 26, 1973, JACK KAPS, a/k/a Jack Kay, and SAMUEL M. WAGNER, a/k/a Mickey Wagner, met with Dennis Green and Richard Laupot and discussed making a \$6000 cash pay-off to Richard Laupot.

4. On or about December 6, 1973, SAMUEL M. WAGNER, a/k/a Mickey Wagner and NICHOLAS SINIGAGLIA met with Dennis Green, gave him \$6000 in cash that was to be delivered to Richard Laupot, and signed a "Contractor's Assignment" in which they falsely stated that no money had been promised or paid, directly or indirectly, to Richard Laupot.

5. On or about December 11, 1973, SAMUEL M. WAGNER, a/k/a Mickey Wagner told Dennis Green on the telephone that he was returning that day to the premises of Universal Metal Chain Corporation with HARVEY MARKS.

6. On or about December 13, 1973 MICHAEL GLAZER and HARVEY MARKS caused a bid for \$294,000 to be submitted to the Department of Relocation and Management Services.

7. On or about December 13, 1973, SANFORD SCHER caused a bid for \$274,750 to be submitted to the Department of Relocation and Management Services.

8. On or about December 13, 1973, NICHOLAS SINIGAGLIA and SAMUEL M. WAGNER, a/k/a Mickey Wagner, caused a bid for \$250,000 to be submitted to the Department of Relocation and Management Services.

9. On or about December 28, 1973, MICHAEL GLAZER and HARVEY MARKS caused a bid for \$272,000 to be submitted to the Department of Relocation and Management Services.

10. On or about December 28, 1973 SANFORD SCHER caused a bid for \$258,950 to be submitted to the Department of Relocation and Management Services.

11. On or about December 28, 1973, NICHOLAS SINIGAGLIA and SAMUEL M. WAGNER, a/k/a Mickey Wagner, caused a bid for \$225,000 to be submitted to the Department of Relocation and Management Services.

(Title 18, United States Code, Section 371.)

COUNTS TWO AND THREE

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, JACK KAPS, a/k/a Jack Kay, NICHOLAS SINIGAGLIA and SAMUEL M. WAGNER, a/k/a Mickey Wagner, the defendants, in a matter within the jurisdiction of a department of the United States, to wit, the Department of Housing and Urban Development, unlawfully, wilfully and knowingly did make false, fictitious and fraudulent statements and representations in a "Bid for Moving Business Concerns" for the move of the Universal Metal Chain Corporation, to wit, that there had been no agreement with any other person to fix the price, or any part of the price, and to submit a sham or collusive proposal or bid, whereas in truth and in fact, as the defendants then and there well knew, they had entered into such an agreement.

<u>COUNT</u>	<u>DATE</u>	<u>AMOUNT OF BID</u>
2	December 13, 1973	\$250,000
3	December 28, 1973	\$225,000

(Title 18, United States Code, Sections 1001 and 2.)

COUNTS FOUR AND FIVE

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, SANFORD SCHER, the defendant, in a matter within the jurisdiction of a department of the United States, to wit, the Department of Housing and Urban Development, unlawfully, wilfully and knowingly did make false, fictitious and fraudulent statements



and representations in a "Bid for Moving Business Concerns" for the move of the Universal Metal Chain Corporation, to wit, that there had been no agreement with any other person to fix the price, or any part of the price, and to submit a sham or collusive proposal or bid, whereas in truth and in fact, as the defendant then and there well knew, he had entered into such an agreement.

<u>COUNT</u>	<u>DATE</u>	<u>AMOUNT OF BID</u>
4	December 13, 1973	\$274,750
5	December 28, 1973	\$258,950

(Title 18, United States Code, Sections 1001 and 2.)

COUNTS SIX AND SEVEN

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, MICHAEL GLAZER and HARVEY MARKS, the defendants, in a matter within the jurisdiction of a department of the United States, to wit, the Department of Housing and Urban Development, unlawfully, wilfully and knowingly did make false, fictitious and fraudulent statements and representations in a "Bid for Moving Business Concerns" for the move of the Universal Metal Chain Corporation, to wit, that there had been no agreement with any other person to fix the price, or any part of the price, and to submit a sham or collusive proposal or bid, whereas in truth and in fact, as the defendants then and there well knew, they had entered into such an agreement.

<u>COUNT</u>	<u>DATE</u>	<u>AMOUNT OF BID</u>
6	December 13, 1973	\$294,000
7	December 27, 1973	\$272,000

(Title 18, United States Code, Sections 1001 and 2.)

COUNTS EIGHT AND NINE

The Grand Jury further charges:

1. On or about February 27, 1973, in the Southern District of New York, SANFORD SCHER, the defendant, having duly taken an oath as a witness that he would testify truthfully before a Grand Jury of the United States of America, duly impaneled and

sworn in the United States District Court for the Southern District of New York and inquiring for that District, unlawfully, wilfully and knowingly and contrary to said oath did make false material declarations to said Grand Jury which he knew to be false as set forth below.

2. At the time and place aforesaid, the Grand Jury was conducting an investigation, pursuant to Title 18, United States Code, Sections 371 and 1001, to determine whether, in connection with the operation of the Federal Urban Renewal Program, certain moving companies had rigged bids and otherwise been involved in collusive or illegal conduct that affected the sound and honest administration of the program.

3. It was material to the Grand Jury's investigation to determine whether the defendant SANFORD SCHER had any information concerning the rigging of bids and whether the defendant SANFORD SCHER had himself participated in a plan whereby a rigged, sham or collusive bid was presented to the New York City Department of Relocation and Management Services.

4. At the time and place aforesaid, the defendant, SANFORD SCHER, appearing as a witness under oath, did testify falsely with respect to the aforesaid material matters as set forth in Counts 8 and 9 below:

COUNT 8

Q. In connection with the sealed bid which is the Universal Metal Chain Company, how did you come to submit the bid in that case?

A. We usually go out and find out what areas are being condemned and do a survey on the street and write letters and make telephone calls, inquiries, sometimes we knock on doors, give our business cards and then the customer calls us if they wish our services or a price.

Q. Is that the way it happened with Universal Metal Chain?

A. Yes.



Q. Do you know Wagner Moving and Storage:

A. Yes, I know him.

Q. Who is the principal at that company?

A. Mickey Wagner.

Q. Prior to the bid opening on that job [Universal Metal Chain Company], did you know who was going to submit bids on that job?

A. No.

\* \* \*

Q. Have you ever been asked to submit a bid by another moving company?

A. No.

COUNT 9

Q. Where do you get the bid form, itself, from?

A. Either the site office or the main office, Department of Relocation, or the tenant at times.

Q. . . . Do you know where you got the form in the Universal Metal Chain?

A. I usually have a few of those in my office, therefore, I don't have to run. I get it from the main office at 100 Gold Street.

Q. Main office of --?

A. Department of Relocation.

Q. City of New York?

A. Correct. I keep it in my file and whenever I have a bid, I submit it on that, if it is required for that particular phase of work.

Q. Is that what happened with Universal Metal Chain?

A. I believe so.

Q. Where else could you have gotten it?

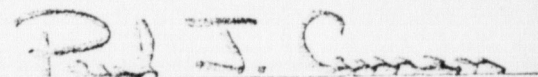
A. From the tenant or from the office.

Q. Site office of the --

A. In Williamsburg, in that particular instance.

(Title 18, United States Code, Section 1623.)

Foreman

  
PAUL J. CURRAN  
United States Attorney

**United States District Court**

**SOUTHERN DISTRICT OF NEW YORK**

**THE UNITED STATES OF AMERICA**

**vs.**

**MICHAEL GLAZER, et al.,**

**Defendants.**

**INDICTMENT**

**75 Cr.**

(Title 18, United States Code,  
Section 1623.)

**PAUL J. CURRAN**

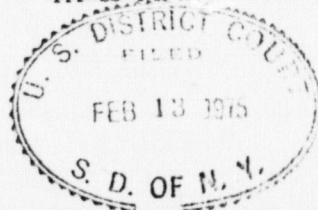
*United States Attorney*

**A TRUE BILL**

*Francis W. Walker*

**Foreman**

FPI-88-1-13-70 4023



2/24/75 Deft Michael H. Kappa (Atty Richard Ruck  
Pro) Deft enters a plea of nolo contendere assigned to  
Mr. Makin. 10 days for motion. Deft R.C.P.  
To surrender passport.

2/24/75 Deft Jack Kappa (Atty David Rosner) Deft  
enters a plea of nolo contendere assigned to  
Mr. Makin. 10 days for motion. Deft R.C.P.  
To surrender passport.

2/24/75 Deft Harold Marking (Atty Robert W. Schirer  
Pro) Deft enters a plea of nolo contendere assigned to  
Mr. Makin. 10 days for motion. Deft R.C.P.  
To surrender passport.

2/24/75 Deft Samuel C. Kappa (Atty Robert W. Schirer  
Pro) Deft enters a plea of nolo contendere assigned to  
Mr. Makin. 10 days for motion. Deft R.C.P.  
To surrender passport.

2/24/75 Deft Walter J. Kappa (Atty Robert W. Schirer  
Pro) Deft enters a plea of nolo contendere assigned to  
Mr. Makin. 10 days for motion. Deft R.C.P.  
To surrender passport.

2/24/75 Deft Samuel S. Kappa (Atty Robert W. Schirer  
Pro) Deft enters a plea of nolo contendere assigned to  
Mr. Makin. 10 days for motion. Deft R.C.P.  
To surrender passport.

W. Schirer

W. Schirer

4-21-75 (Deft Sanford Adler (Atty Fentell)

Ad guilty et q. P.S.R.C. date of sentence 5-28-75  
10 AM

Back continued.

DM

over.



4-21-75 Deft Sinigaglia, and Wagner (both attorneys present)  
plead guilty to 1st. P.S.R.C. date of  
sentence 5-28-75 10 AM Trial continued.

Mac Grubbs / DM

4-21-75 Deft Grubbs (attorney present) removed from  
trial. Court to submit Raffle Contention  
VOID over Mac Grubbs

4-21-75 Deft Glazer and deft Kape proceed to  
trial. 4-21-75 Trial Begun.

4-21-75 Deft Marks <sup>oral</sup> motion to dismiss the indictment  
Motion granted. Mac Grubbs / DM

4-22-75 TRIAL CONTINUED.

4-23-75 " "

4-24-75 TRIAL CONTINUED, AND CONCLUDED

Jury finds the deft Glazer guilty

Jury finds the deft Jack Kape guilty

Jury does not reach a verdict. Jury returns

4-25-75 Jury returns to continue deliberations at 10 AM

Jury returns a partial verdict at 5 P.M.

Jury finds deft Glazer not guilty on 1st.

No decision on 2nd to Glazer.



Court declines mistrial as to Ct. 6

Jury finds deft Elizer guilty on Ct 7

Jury finds deft Kape guilty on Ct 1

Jury finds deft Kape guilty on Ct 2

Jury finds deft Kape guilty on Ct 3.

Bail fixed by Court at \$2,500 P.R.B. for  
Elizer ~~def.~~ P.S.R.O. Date of sentence 5-28-75  
(~~Elizer~~) at 10 AM.

Bail fixed by Court at \$7,500 <sup>Mr. Graham</sup> P.R.B. for deft  
Date of sentence 5-28-75 at 10 AM. Kape  
Mr. Graham J. WM

5-28-75

Deft Elizer (Atty present) sentenced. ~~WM~~

3 months and fined \$10,000.00 on Ct 7.

Deft to stand committed until ~~for~~ the  
total fine of \$10,000.00 is paid.

Gov T motion to dismiss Ct 6. Granted.

Mr. Graham J. WM

5-28-75 Deft Senegaglia (Atty present) sentenced.

I.S.S. on Ct 1. Deft placed on probation  
for 6 months. Ct 2, 3 dismissed. WM

Mr. Graham J.

5-28-75 Deft Scher (Atty present) sentenced

Fined \$5,000 on Ct 9. and to stand committed until  
the total fine is paid. Total fine is stayed  
on Ct 10. Ct 11 dismissed.

5-25-75 Deft (Wagner (Atty present)) sentenced  
15 days and fined \$7,500.00 on Ct 1. Deft  
to surrender on June 11, 1975 at 10:30 AM in  
Courtroom 506. Cts 2 and 3 are dismissed.

Wm. Mahon  
Wm



## 2 CHARGE OF THE COURT

3 THE COURT: The Court and the jury have different  
4 functions. It is my function and duty at this time to  
5 instruct you on the law that applies to this case and it is  
6 your duty to accept the law as I give it to you in these  
7 instructions, whether or not you agree with it, and then  
8 it becomes your duty to apply that law to the facts as  
9 you find them.

10 In short, I am the exclusive judge of the law.  
11 You, on the other hand, are the exclusive judges of the  
12 facts. You and you alone decide what weight and what effect  
13 and what value you will give to the evidence. You and you  
14 alone decide whether or not to believe a witness, and, of  
15 course, ultimately, you decide the guilt or innocence of  
16 each defendant on trial in this case.

17 You are not to conclude from any rulings that  
18 I made throughout this trial, or any questions that I may  
19 have asked, that I have any opinion one way or the other  
20 as to guilt or innocence of either of these defendants.  
21 Their guilt or innocence is a decision which is exclusively  
22 up to you.

23 Finding the facts is merely a process by which  
24 you, the jury, consider the exhibits which have been  
25 received in evidence, consider the testimony of all of the

witnesses. Sift out what you believe. Weigh it in the scale of your reasoning powers and draw such conclusions as your experience and common sense tell you that the evidence supports and justifies, and decide just where the truth lies in this case.

In this connection all evidence may be of two general types: direct and circumstantial.

Evidence is direct when the facts are shown by exhibits which are admitted into the evidence, or when sworn to by witnesses who have actual knowledge of them from something that they have observed or somebody they have heard or somebody that they have felt, or some knowledge that they have derived through the use of their fundamental senses.

Circumstantial evidence simply means drawing a logical inference or conclusion from other connected facts that had been seen or heard.

For example, in this case, there is direct evidence on the tapes, as I recall it, that Mr. Kay said that he could find out what the City had estimated this moving job for. The circumstantial evidence is the fact that the low bidder here came up with precisely that estimate. So the Government asks you to draw the conclusion from the direct evidence that Kay said he could get it, and from



the fact that Wagner came up with that figure, that the circumstantial evidence connects the two.

I am not suggesting you should draw that inference. I am merely using that as an illustration of the principle. It is for you to decide whether to draw the inference that Wagner got that information from Kay who, in turn, got it as he said he could or would.

Now, it is your memory of the evidence that controls here. It is not the way I remember it and it is not the way counsel remember it. If your memory squares with the lawyers' memory of the evidence as they were reviewing their memory of it in their closing arguments, you may accept their version of the evidence, but to the extent that you have a different recollection, you are bound by your oath to reject what they said and to rely on your own memory. When I say "your own memory," I mean your collective memory as a jury. One of you can help the other to remember things.

Sometimes juries are only out for their deliberations a few minutes, when I get a note that says, "We want all the testimony of this one or we want the transcript of the testimony. The court reporter types on a Stenotype Machine and that isn't transcribed until months from now, so there is no transcript of the testimony, and you should

try to exhaust your collective memory; but in the event you cannot remember any of the testimony and if you do want part of it read to you by the reporter, if you will specify exactly what you want, I will be happy to have you return to the box and have the reporter read that part of the testimony both on direct and on cross-examination; and, as a matter of course, I will see that all the exhibits except the \$6,000 are sent in to the jury as soon as you retire for your deliberations. Not that I don't trust you with the \$6,000, but sometimes these things have a way of getting lost.

One of your most important functions is determining just where the truth lies in this case. It is your exclusive function to decide which witnesses you will believe and this is so as to every witness, whether the witness was called by the Government or by the defense. You are not to be influenced by the number of witnesses called by either side or by the number of documents received in evidence. You are concerned not with the quantity of the evidence, but with the quality of the evidence, and the first testimony which you should apply in determining the trustworthiness of a witness, is to measure what he says against your plain, everyday, common sense.

You don't hang your common sense with your coat.



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You bring it with you into the jury box and you use it.  
You are not bound to believe unreasonable statements or to  
accept testimony that defies your common sense, or worse,  
insults your intelligence, just because statements are  
made in sworn testimony.

You saw the witnesses in this case. In deciding  
whether to believe a witness, you should consider his con-  
duct and his manner on the stand. I saw you watching every  
witness here with particular care as they were testifying.  
Obviously, you were sizing them up. How did the witness  
impress you? Was the witness being frank with you? Was  
he being evasive? Did his version of the facts here  
appear to be straightforward? Was he trying to conceal  
anything? Was he just parroting answers? Did he have  
any motive to testify falsely? Is he interested in any  
way in the outcome of this case? How strong or weak was  
his memory of important events?

In short, can you rely on him? Can you trust  
him? Did he show any bias or prejudice toward either  
party to this case? You ought to consider also, his  
opportunity to know the facts about which he testified  
and the probability or improbability of what he said.  
Probably most important of all, how does his testimony  
add up when considered in the light of all the evidence?

2 How far does his story check out here? For example, with  
3 the tape recordings and with the written documentary  
4 evidence? Has the witness made any inconsistent statement  
5 on the stand and if so, how important are those inconsis-  
6 tencies? Has he made any inconsistent statement on some  
7 earlier occasion and if so, how important are those incon-  
8 sistencies?

9 Harvey Marks is charged here as a co-conspirator  
10 and as an accomplice and you should consider that fact in  
11 testing his credibility and in weighing his testimony.  
12 Obviously, Marks is not incapable of telling the truth about  
13 what occurred just because he is charged as a co-conspirator  
14 and a defendant and an accomplice, but you must examine  
15 his testimony with special care and act upon it with  
16 caution.

17 In the prosecution of a crime, the Government is  
18 frequently called upon to use persons who are accomplices.  
19 Often it has no choice. They are properly used. After all,  
20 the Government must rely upon witnesses to transactions,  
21 whoever they are, otherwise in many instances it would be  
22 difficult to detect and to prosecute wrongdoers, and this  
23 is particularly so in cases of conspiracy. Frequently it  
24 happens that only those on the inside of the illegal plan  
25 can give evidence which is material and important to the



2 case.

3 Now, there is no requirement in the law that the  
4 testimony of an accomplice be corroborated or supported  
5 or backed up by other evidence. A conviction may rest  
6 upon the testimony of an accomplice alone, if you believe  
7 it. The credibility of Marks and also of Green, like  
8 that of all the others, is for you and you alone to determine,  
9 taking into account the interest of the witness, his motive,  
10 any inducement or consideration he may have received or  
11 may hope to receive or expect to receive from the Govern-  
12 ment, any hostility he may bear towards any defendant  
13 and any other evidence you recall which may reasonably be  
14 considered to influence and color his testimony.

15 Now, the Defendant Glaser testified as a witness.  
16 He was not required by law to do so, and his appearance  
17 as a witness was entirely voluntary on his part. If he had  
18 not testified, his failure to do so could not have been  
19 considered by you in any manner in determining his guilt  
20 or innocence, but having testified, the law requires that  
21 his testimony be judged and appraised by the same standards  
22 applied to the testimony of any other witness, giving con-  
23 sideration, of course, to his background, to his personality  
24 and his natural interest in the outcome of this trial.

25 The Defendant Kaps or Kay did not take the stand.

Mr. Kay was not required to take the stand and testify in his own behalf. He has no burden of proof to sustain in this case. He has denied the charges made against him here by his plea of "not guilty" and under the law he is presumed to be innocent. The fact that he has not testified cannot be taken into consideration by you in any manner. You may not permit that fact to weigh in the slightest degree against the Defendant Kay nor should that fact even enter into your discussions or deliberations in any way.

If you find that any witness has deliberately and willfully lied with respect to any material fact in his testimony offered at this trial, you may follow either one of two courses: You may accept as much of the witness' testimony as you believe, or you may reject, if you wish, his entire testimony.

Before discussing the crimes charged here, I want to remind you that an indictment is a mere accusation. It is not evidence of the truth of the charge made and you are to draw no inference of guilt from the mere fact that these defendants have been indicted. An indictment simply means that the defendant has been accused of a crime. Neither defendant has any burden of proof to sustain in this case and both have denied their charges made against him by their plea of "not guilty" and you heard Mr. Glaser's



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testimony denying his guilt.

No defendant has a burden of proof to sustain in this case. He is under no obligation to produce any witnesses. He is presumed to be innocent and this presumption of innocence remains throughout the trial and during the deliberations of the jury, the presumption of innocence, is overcome when and only when the Government has established the guilt of the defendant whom you are considering, beyond a reasonable doubt.

What do I mean by "a reasonable doubt"? As the words imply, a reasonable doubt is a doubt based upon reason, a reason which appears in the evidence or in the lack of evidence. It is not some vague, speculative, imaginary doubt, nor a doubt based upon emotion, sympathy or prejudice, or upon what some juror might regard as an unpleasant duty. The Government is not required to prove a defendant guilty beyond every possible doubt, nor to an absolute or mathematical certainty, because such measure of proof is usually impossible in human affairs.

You should review all of the evidence as you remember it. Sift out what you believe, discuss it with your fellow-jurors, weigh and compare your view of the evidence with your fellow-jurors, analyze the evidence. If that process produces a solemn belief or conviction in

your mind, such as you would be willing to act upon without hesitation if this were an important matter of your own, then you may say that you have been convinced beyond a reasonable doubt.

On the other hand, if your mind is wavering or so uncertain that you would hesitate before acting that this were an important matter of your own, then you have not been convinced beyond a reasonable doubt and you must return a verdict of "not guilty."

At the outset here, I wish to point out that although the indictment here originally contained 9 counts, only Counts 1, 2, 3, 6 and 7 remain for your consideration. Each of those counts charges a separate offense or a crime and each must be considered by you separately. And for your convenience, I have cropped the indictment so that all that remains here are the counts which you must decide, and I will send a copy of this revised version in with the form when you retire for your deliberations, so you will have it before you and be able to read and understand precisely what the charges are as you consider them.

I also wish to point out that although the indictment names six defendants: Glaser; Kaps, a/k/a Jack Kay; Harvey Marks; Sanford Scher; Nicholas Sinigaglia; and Samuel M. Wagner, a/k/a Mickey Wagner; only the defendants



1 Michael Glaser, and Jack Kaps, a/k/a Jack Kay, are on trial  
2 before you and they are the only defendants as to whom you  
3 must render your verdict, although as I will explain to  
4 you shortly in considering a defendant's guilt or innocence,  
5 you may have to determine the nature of the participation,  
6 if any, of the other named defendants.  
7

8 In the determination of innocence or guilt, you  
9 must bear in mind that guilt is personal. There is no  
10 such thing in our law as guilt by association. The guilt  
11 or innocence of each defendant on trial before you, must  
12 be determined separately with respect to him solely on the  
13 evidence presented against him or on the lack of evidence  
14 against him.

15 Let us turn to specific charges in this case:

16 Counts 2, 3, 6 and 7 of the indictment I will  
17 call the substantive counts. That is just a legal term  
18 and will help you separate the substantive counts from  
19 Count 1, which is the conspiracy count. A substantive  
20 count is a count which charges the actual commission of  
21 the crime: here, making false statements to a Government  
22 agency. Those are the charges, in essence, in Counts  
23 3, 6 and 7; whereas a conspiracy is an agreement to commit  
24 the crime, whether or not the crime is ever committed.

25 The Defendants Glaser and Kaps are both named

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2 in Count 1, the conspiracy count.

3 The Defendant Kaps is named in Counts 2 and 3  
4 and the Defendant Glaser is named in Counts 6 and 7.

5 Count 1, the conspiracy count charges that from  
6 on or about November 6, 1973 up to and including the date  
7 of the filing of this indictment, which was in February,  
8 1975, the defendants named in that count and others to the  
9 Grand Jury unknown, conspired with each other unlawfully,  
10 willfully and knowingly, to defraud the United States,  
11 to make false, fictitious, and fraudulent statements and  
12 representations in bids; and 3, to make false, fictitious  
13 and fraudulent statements in a contractor's assignment.

14 In order to convict the Defendants Glaser and  
15 Kaps on Count 1, the Government must prove to your satis-  
16 faction each of the following three elements:

17 One. The existence of the conspiracy charged in  
18 the indictment for any one of the following purposes:  
19 Unlawfully, willfully and knowingly to defraud the United  
20 States; make false, fictitious and fraudulent statements  
21 and representations in bids; and/or make false, fictitious  
22 and fraudulent statements in a contractor's assignment.

23 The second element: That the defendant whom you  
24 are considering, knowingly joined the conspiracy with  
25 knowledge of its unlawful purposes; and three, that any one



of the conspirators, whether or not a defendant on trial, committed at least one overt act in furtherance of the unlawful conspiracy.

I will explain what these terms mean:

The first element of the crime is the existence of a conspiracy. What is a conspiracy? A conspiracy for our purposes is simply a combination, association or agreement among two or more people to commit a crime. Here the crimes charged are the objects of the conspiracy in Count 1 of the indictment. Thus, a conspiracy is kind of a partnership in a criminal enterprise or organization. The gist of the crime is the combination or agreement or association to violate the law.

This does not mean that two or more people must meet and sign a formal partnership agreement or that they must sit down and agree in so many words as to what their unlawful plan or scheme is to be, or on the details of how they are going to carry it out. When persons enter into a combination or agreement to violate the law, common sense tells us it would be most unusual for them to sit down and enter into a written agreement or even to express out loud what their illegal agreement or even to express out loud what their illegal agreement was to be. Rather, much is left to implication and to intrigue and to tacit understanding. Conspirators do not proclaim their plot or

publicly announce their purposes. The very nature of a conspiracy calls for silence, for secrecy, for keeping your mouth shut.

The first element is satisfied; therefore, if you find beyond a reasonable doubt that any two or more people in any way, intentionally combined or agreed to a common plan knowingly and intentionally, to defraud the United States or to make false, fictitious and fraudulent statements in bids or in a contractor's assignment. The first object of the conspiracy was to defraud the United States. To defraud usually signifies the acquiring of something of value by trick, deceit or overreaching or by dishonest, false statements.

In order to find that the defendant whom you are considering conspired to defraud the United States, the Government must prove beyond a reasonable doubt that the defendant and a co-conspirator combined to circumvent or to undermine or defeat the competitive, sealed bid procedure of the City of New York, Department of Relocation and Management Services.

That procedure, you will recall from the testimony of Mr. Coyle, was to select a company to move equipment of Universal Metal Chain Corporation from Brooklyn, New York to Clifton, New Jersey, in connection with a Federal urban



renewal program, at the lowest cost to the United States.

The second object of the conspiracy was to make false, fictitious and fraudulent statements and representations in bids -- and you will see that is allegedly in violation of the Criminal Code, Title 18, United States Code, Section 1001.

The third object of the conspiracy as charged in the indictment was to make false, fictitious and fraudulent statements in a contractor's assignment in violation of 18 USC 1001. That law, Section 1001, says:

"Whoever, in any manner within the jurisdiction of any department or agent of the United States, knowingly makes any false, fictitious or fraudulent statements or representations, shall be guilty of a crime."

So, you will see that this law basically makes criminal the deliberate making of a false, fictitious or fraudulent statement or representation in relation to any matter within the jurisdiction of a department or agency of the United States and the matter involved here, bids or contractor's assignments submitted to the Department of Relocation of the City of New York, in connection with the Federal Urban Renewal Program, is a matter within the jurisdiction of the Department of Housing and Urban Development of the United States. So far as that element of

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the crime is concerned, there is no dispute and really nothing for you to decide.

Count 1 sets forth, and I have just reviewed the three objects of the alleged conspiracy. The Government satisfies the first element of a conspiracy if it proves beyond a reasonable doubt that a conspiracy existed for any one of the three alleged purposes. It is not necessary for the Government to prove all three purposes. Proof of any one is sufficient.

Now, in determining whether there was such a plan, understanding, combination, conspiracy or agreement, you should consider such evidence as you recall and believe, as to whether the transactions here were conducted in a straightforward, simple, open manner or whether they were purposely made devious, circuitous, mysterious; whether normal business records were used or whether they were not used; whether meetings were open or secret; whether the meaning of the conversations was clear and obvious, or whether it was purposely made ambiguous and guarded; whether the persons involved were known or concealed their identities in any way; whether they were out front where they were visible in the transaction; whether they kept the usual business records; whether they dealt in check or by cash, and any other evidence which you can recall and believe as



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2 to whether a defendant's conduct and whether he made his  
3 affairs the way he handles affairs here, were open and  
4 aboveboard or whether they were surrounded by secrecy and  
5 intrigue, which are the hallmarks of an unlawful conspiracy.

6 From the point of view of the law, there is a  
7 danger to the public when two or more people combine to  
8 do something which is unlawful. The danger is greater than  
9 if the known criminal acts by himself, because in numbers  
10 and in organization, there is strength, and because two or  
11 more people are able to accomplish far more serious crimes  
12 and crimes that are difficult and harmful to the public.  
13 Because of this, a conspiracy to commit a crime is a crime  
14 in and of itself, separate and apart from the crime which  
15 it is the object of the conspiracy to accomplish. Thus, you  
16 may find that a conspiracy existed although none of the  
17 purposes of this conspiracy were ever accomplished.

18 Here, for example, the Government is not required  
19 to prove that the defendants actually succeeded in fraudulently  
20 circumventing the competitive, sealed bid procedure or  
21 actually made any falsification or fraudulent statements  
22 in the bids or in the contractor's assignment. It is  
23 enough if the Government proves beyond a reasonable doubt  
24 that the defendants knowingly entered into an agreement to  
25 do one of those things and if any one of the members of the



1 conspiracy--and I will talk about that in a minute -- took  
2 any step to accomplish one of those illegal purposes. How-  
3 ever, of the accomplishment of the object or purpose of  
4 the conspiracy is the most persuasive evidence of the  
5 existence of the conspiracy itself.  
6

7 The period of time involved in this conspiracy is  
8 from on or about from December 6th up to and including  
9 February 13, 1975. December 6, 1973 to February 13, 1975.  
10 It is not necessary for the Government to prove that the  
11 conspiracy started and ended on those particular dates. It  
12 is sufficient if you find that in fact a conspiracy was  
13 formed, that it existed for some substantial time within  
14 the period set forth in the indictment, and that at least  
15 one overt act was committed during that period. The overt  
16 act may not have been committed by either of the defend-  
17 ants on trial. It is enough that the overt act was committed  
18 by any one or more of the conspirators. That is sufficient.

19 I told you a moment ago, we would talk about  
20 membership in a conspiracy. The second element here that  
21 the Government must prove beyond a reasonable doubt is  
22 that the defendant whom you are considering, knowingly  
23 joined the conspiracy with knowledge of its unlawful purpose.  
24 When I say "joined the conspiracy," I do not mean that a  
25 defendant had to file some sort of an application, or step

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up and say, "Count me in," or anything of that nature; but before you can be found to be a member of a conspiracy, a defendant must know of the existence of the conspiracy and of its unlawful purpose and he must voluntarily and knowingly join in the venture with others with an intent to combine with others to violate the law. He must knowingly promote the scheme.

You will note that in describing the elements of the crime of conspiracy, I have said that the defendant must have acted knowingly, willfully and intentionally. You will also note that the indictment says that the defendants acted unlawfully, willfully and knowingly. This does not mean that a defendant must be aware that his conduct is criminal or that he is violating Section 1001 of Title 18 of the United States Code. It simply means that he must know what he is doing; that he acts freely and voluntarily, deliberately and on purpose and not because of mistake, accident, carelessness or other innocent reason. In other words, there must be a mental operation of his own free will that he chooses to engage in the conduct in which he does engage. The key to this element of the crime is the defendant's guilty knowledge and intent.

In determining whether a defendant, acted knowingly and intentionally, it is obviously impossible to look into his mind. Intent



2 and knowledge may be inferred from the way the defendant acts,  
3 by what he says, and from his conduct in light of all the  
4 surrounding circumstances. Thus, the adage: "Actions  
5 speak louder than words," applies here.

6 In determining intent, therefore, you should  
7 consider all the evidence which you recall and believe as  
8 to how a defendant acted, the way he spoke, the words he  
9 used, what he said, his manner of saying it and how he  
10 conducted himself, and again, were his dealings open and  
11 aboveboard or were they secret, furtive and devious.

12 You should also consider his knowing participa-  
13 tion in any of the acts or circumstances which you believe  
14 show the existence of a conspiracy. In short: Was he  
15 consciously working with others to defraud the United States  
16 or make false statements to the City Housing and Develop-  
17 ment Administration?

18 The mere fact, however, that a defendant knew  
19 about transactions or was present when others were talking  
20 about them or had a friendship or an association or business  
21 dealing with another member of the conspiracy, is not, in  
22 itself, enough to make him a conspirator unless you first  
23 find beyond a reasonable doubt that he knew of the con-  
24 spiracy and intentionally joined with others with knowledge  
25 of its unlawful purpose.



2 One can become a member of a conspiracy without  
3 knowledge of all of the details or all of the operations  
4 of the conspiracy or all of its conspirators, which role is  
5 usually different from the role of every other conspiracy.  
6 One defendant may know only one other member of the  
7 conspiracy. Yet, if he knowingly cooperates to further the  
8 unlawful purpose of the conspiracy with knowledge that he  
9 has joined with others to violate the law, he becomes a  
10 member, although his role may be only an insignificant or  
11 subordinate one.

12 If you find a defendant did join the conspiracy  
13 with knowledge of its illegal purposes, then he is bound  
14 by what others say and do to promote or further the venture  
15 even though he is not present himself. Each conspirator  
16 is the agent or partner of every other conspirator.

17 You will recall that the third element of the  
18 crime of conspiracy is the commission by any conspirator  
19 of at least one overt act in furtherance of the object of  
20 the conspiracy. "Overt act" means an act by any member of  
21 the conspiracy in an effort to accomplish some purpose of  
22 the conspiracy. The reason the law requires an overt act  
23 is because a person might agree with someone to commit a  
24 crime, then change his mind. Therefore, before a defendant  
25 can be convicted of the crime of conspiracy, one or more

of the members of the conspiracy must take at least one step or perform one single act which moved towards carrying out the unlawful intent to commit the crime.

The Government here has alleged 11 overt acts and you will note upon reading the indictment, which I will send in to you, that some of these acts are innocent in and of themselves. Nevertheless, if those acts were performed by any member of the conspiracy, whether or not that defendant is now a defendant on trial and that those acts were performed during the existence of the conspiracy and in furtherance of its purposes, then those acts are sufficient to satisfy the third element.

The Government is not required to prove that all of the overt acts alleged were committed. In other words, it doesn't have to prove that all 11 overt acts were committed. It is enough if the Government proves beyond a reasonable doubt that at least one of the overt acts was committed in furtherance of the purposes of the conspiracy by one or more members of the conspiracy.

The evidence shows that on a number of occasions when Dennis Green or Richard Laupot met with or telephoned the defendants now on trial, Green and Laupot used certain recording devices -- I misspeak there. There is no evidence that any recordings were ever made as to Mr. Glazer. I



instruct you that the use of those devices in this case is entirely lawful. The recording of conversations in this case are therefore perfectly proper evidence on this trial.

As to Count 1, you should consider each of these defendants separately. If you find that the Government has failed to prove to your satisfaction beyond a reasonable doubt any of the three elements of the crime of conspiracy as I have defined them, then you must acquit that defendant on Count 1. On the other hand, if you find that the Government has proved to your satisfaction beyond a reasonable doubt all three elements of the crime of conspiracy as I have defined them, then you must convict that defendant on Count 1.

I have about another 15 minutes of instructions. Your sandwiches are here. Would you prefer to break now for your lunch?

We will break for lunch. It won't take more than a half-hour and don't discuss the case at this point. Wait until you have heard my charge completely.

(The jury left the courtroom.)

THE COURT: I would appreciate if you just get a sandwich and come back as quickly as you can.

(Luncheon recess.)



## AFTERNOON SESSION

2:10 p.m.

(In open court. Jury present.)

THE COURT: I will now discuss the remaining counts, the substantive counts.

Counts 2 and 3 of the indictment charge that Defendant Kaps and Counts 6 and 7 charge that the Defendant Glazer, on or about the date set forth in each of those counts, in a matter within the jurisdiction of a department of the United States, the Department of Housing and Urban Development, unlawfully, willfully and knowingly made false, fictitious and fraudulent statements and representations in a bid for moving business concerns, for the move of Universal Metal Chain Corporation, in that they falsely represented that there had been no agreement with any other person to fix the price or to submit a collusive or a sham bid.

Counts 2, 3, 6 and 7 are based on a Federal law which makes it a criminal offense for anyone knowingly and willfully to make any false, fictitious or fraudulent statement or representation in any manner within the jurisdiction of a department or agency of the United States.

As I told you earlier, the bid involved here are statements made in a matter within the jurisdiction of

the Department of Housing and Urban Development, and that department is a department of the United States.

Thus, there are three remaining elements which the Government must prove beyond a reasonable doubt to establish a violation of the law involved in these counts. In order to convict the Defendant Kaps on Counts 2 and 3 and the Defendant Glazer on Counts 6 and 7, the Government must prove to your satisfaction beyond a reasonable doubt each of the following three elements:

One: That on or about the date set forth in the count which you are considering the defendant whom you are considering made or caused to be made a statement or representation.

Two: That the statement or representation was false, fictitious or fraudulent.

Three: That the defendant knew that the statement or representation was false, fictitious or fraudulent.

As to the first element that a statement or representation was made, a bid for moving a business concern is a statement and Mr. Coyle testified -- and there is no dispute in the evidence -- that the bids described in each of Counts 2, 3, 6 and 7 were submitted to the New York City Housing Development Administration in the Southern District of New York. The only question for you to decide



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2 as to the first element therefore, is whether the defendant  
3 whom you are considering made or caused the bid to be made  
4 and submitted to the New York City Housing and Development  
5 Administration.

6 As to the second element that the statement or  
7 representation was false, fictitious or fraudulent, if you  
8 find that the defendant whom you are considering certified  
9 on the bid submitted to New York City Housing Development  
10 Administration that there had been no agreement to fix the  
11 bid price or any part of the bid price, or to submit a sham  
12 or collusive bid when in fact there was such an agreement,  
13 then the second element has been satisfied.

14 As to the third element that the defendant whom  
15 you are considering knew that the statement or representa-  
16 tion was false, fictitious or fraudulent, you apply the same  
17 instructions I gave you earlier on the subject of what  
18 constitutes knowledge, intent and willfulness.

19 In order to convict Defendant Kaps on Counts 2  
20 and 3 and the Defendant Glazer on Counts 6 and 7, it is  
21 not necessary for the Government to prove that the defend-  
22 ant personally did every act constituting an offense of  
23 the crime charged of submitting false statements. The  
24 law of the United States provides that whoever commits an  
25 offense against the United States, or aids, abets, counsels,



2 commands, induces or procures its commission, is punishable  
3 as a principal.

4 Thus, you may find the Defendant Kaps guilty on  
5 either or both of Counts 2 and 3 and the Defendant Glaser  
6 guilty on either or both of Counts 6 and 7, if you find  
7 beyond a reasonable doubt that the defendant whom you are  
8 considering, knowingly aided and abetted another-- in  
9 plain English, helped another in the commission of the  
10 particular crime charged. In such circumstances, the  
11 defendant would be just as guilty of the crime as if he  
12 had admitted it himself.

13 Here the Government contends that the Defendant  
14 Kaps aided and abetted Nicholas Sinigaglia or Samuel M.  
15 Wagner, or both, in committing the crimes charged in  
16 Counts 2 and 3.

17 Similarly, the Government contends that the  
18 Defendant Glaser aided and abetted Harvey Marks in committing  
19 the crimes charged in Counts 6 and 7.

20 Before you can convict a defendant for aiding  
21 and abetting, you must find that someone committed the  
22 crime --here, either Sinigaglia or Wagner in Counts 2 and  
23 3, and Marks in Counts 6 and 7, and that the defendant  
24 whom you are considering consciously associated himself  
25 with the criminal venture with the intent that his conduct

would help it along, would help it succeed.

You must be convinced beyond a reasonable doubt that the defendant was doing something to aid the crime or to forward the crime of the other person; that the defendant was a conscious, knowing participant in the crime with a stake in its success rather than a mere witness, spectator or bystander on the scene when a crime is committed by another person.

Consider each of Counts 2, 3, 6 and 7 and each defendant separately. If you find as to the count which you are considering that the Government has failed to prove to your satisfaction beyond a reasonable doubt any of the three elements of the substantive crime of submitting false statements as I have defined them to you, and failed to prove that the defendant whom you are considering aided and abetted another in the commission of the crime charged in that count, then you must acquit that defendant on that count.

On the other hand, if as to the count which you are considering you find that the Government has proved to your satisfaction beyond a reasonable doubt all the three elements of the crime as I have defined them for you, or proved that the defendant whom you are considering aided and abetted another in the commission of the crime charged



in that count, then you should convict him on that count.

You are instructed that the question of possible punishment of a defendant in the event of a conviction is no concern of yours, and it should not in any sense enter into or influence your deliberations. The duty of imposing sentence in the event of a conviction rests exclusively upon the Court. The function of the jury is to weigh the evidence in the case and determine the guilt or innocence of the defendant solely upon the basis of that evidence.

When you retire to the jury room, treat each other with consideration and respect as I know you will. If differences of opinion arise, your discussion should be dignified, calm, intelligent. Your verdict must be based on the evidence and on the law, the evidence which was presented in this case as you remember it, and the law as I have given it to you in this instruction. You are each entitled to your own opinion. No juror should acquiesce in a verdict against his individual judgment. Nevertheless, no one should enter the jury room with such pride of opinion that he would refuse to change his mind no matter how convincing or intelligent the argument on the part of another juror or jurors.

Discussion and deliberation are part of our democratic jury process, and your deliberation should be



approached in that spirit. Jury deliberation is jury discussion. Talk out your differences. Each of you should in effect decide the case for himself or herself after thoroughly reviewing the evidence and frankly discussing it with your fellow-jurors with an open-mind and with a desire to reach a verdict. If you do that, you will be acting in the true democratic process of the American jury system.

There are 12 of you on this jury. The alternates will be excused with the thanks of the Court before you retire for your deliberations. Any verdict must be the unanimous verdict of all of you and it must represent the honest conclusion of each of you. I submit the case to you with every confidence that you will fully measure up to the oath which you took as members of this jury, to decide the issues submitted to you fairly and impartially and without fear or favor.

Now members of the jury, if you find that the Government has failed to establish the guilt of the defendant beyond a reasonable doubt, you should acquit that defendant. If you find that a defendant has not violated the law, you should not hesitate for any reason to render a verdict of not guilty as to that defendant. On the other hand, if you find that the Government has established the

1  
2 guilt of a defendant beyond a reasonable doubt, you should  
3 not hesitate because of sympathy or any other reason, for  
4 rendering a verdict of guilty.

5 Your foreman will return an oral verdict in open  
6 court of guilty or not guilty as to each defendant and  
7 to guide you in your verdict, the Court has prepared a form  
8 which you can fill out so you will not confuse the defend-  
9 ants and the counts.

10 Are there any exceptions, gentlemen? If so, I  
11 will hear you at the side bar?

12 (At the side bar.)

13 MR. RUDELL: Your Honor made an allusion about  
14 aiding and abetting Harvey Marks by Glazer. In view of  
15 your Honor's dismissal of the indictment against Marks,  
16 how could he aid and abet him?

17 THE COURT: That is ridiculous. I note your  
18 exception.

19 MR. SCHOFIELD: With reference to your Honor's  
20 charge about inferences and circumstantial evidence, you  
21 were taking up the exact example that Mr. Schwartz had  
22 said with reference to a telephone call--and we never heard  
23 that evidence, by the way. It may well be in those papers,  
24 but I gather you fortified his position inadvertently, in  
25 that you said to the jury, If in fact there was such a



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2 phone call, that amounted to the same amount as turned  
3 out on that document by the committee, and can infer there  
4 was such knowledge. That has not come out at the trial.  
5 It may well be in those papers. I never heard it. The  
6 jury never heard it.

7 THE COURT: It is in the documents. I think I  
8 made it clear. I note your exception.

9 Perhaps I was too facetious with your point. What  
10 do you say?

11 MR. SCHWARTZ: I am not certain of Mr. Rudell's  
12 position. He is not taking exception to your Honor's  
13 charge that the credibility of Marks is to be considered --

14 THE COURT: His exception is: How could you aid  
15 and abet somebody whose case has been dismissed?

16 MR. SCHWARTZ: I think those two are related  
17 because Marks is being considered in that charge on credi-  
18 bility as an aider and abettor and a co-conspirator.

19 THE COURT: I will reserve decision on this.  
20 We will argue it at some length after the jury goes back.  
21 I note your exception.

22 MR. RUDELL: When you said, "If you find a defend-  
23 ant not proven guilty beyond a reasonable doubt," you used,  
24 you should; I think the expression should be, "You must  
25 acquit him."

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THE COURT: No.

(In open court.)

THE COURT: Swear the marshal.

(One marshal was duly sworn.)

THE COURT: Get the exhibits together and send  
them in to the jury.

You may retire.

(At 2:30 p.m., the jury retired to deliberate



## 4. ACTION

- a. If an inmate serving a sentence of imprisonment cannot, because of poverty, pay a committed fine which has been imposed as a part of his sentence, he cannot be held beyond his release date solely for non-payment of the fine.
- b. Whenever such a person reaches his release date, whether by parole, mandatory release, or full-term expiration, he shall be released on the regularly scheduled date and shall not be held further for any non-payment of a committed fine.
- c. In order to substantiate the indigency status of the inmate, the Warden or his designated representative shall take a sworn statement from the inmate in the following form: "I do solemnly swear that I have no property, real or personal, with which I can pay the fine imposed on me, except property which is by law exempt from being taken on civil process for debt. I have no property in any way conveyed or concealed to avoid payment of this fine, or in any way disposed of for my future use or benefit."
- d. The United States Attorney for the District where the inmate was sentenced should be notified approximately 30 days in advance of the release, and given a copy of the sworn statement of indigency. The United States Attorney should be advised that no commitment for non-payment pursuant to 18 U.S.C. 3569 will be carried out in view of the Supreme Court's ruling in the *Williams* and *Tate* cases. A copy of that notification to the United States Attorney should be sent to the Office of General Counsel of the Bureau.

NORMAN A. CARLSON  
Director

Certificate of Service

Aug 18, 1975

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York.

By: Mark Benby